

Meeting Date: 01/27/09

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5B-4



**Date:** January 14, 2009

**To:** City Manager for Council Action

**From:** Director of Water & Sewer Utilities

**Subject:** Approval of Fourth Amendment to the Master Agreement for Wastewater Treatment Between and Among the Cities of San Jose, Santa Clara, and Milpitas and Approval of Third Amendment to the Master Agreement for Wastewater Treatment Between and Among the Cities of San Jose and Santa Clara, and the Cupertino Sanitary District for the transfer of Seven Hundred Fifty Thousand Gallons per Day of Sewage Treatment Capacity from Cupertino Sanitary District to the City of Milpitas.

## EXECUTIVE SUMMARY:

The City of Milpitas has determined that the city's growth will require added capacity for sewage treatment at some time in the future prior to a foreseeable expansion of the jointly-owned San Jose - Santa Clara Water Pollution Control Plant (WPCP). They have negotiated to purchase an added seven hundred fifty thousand (750,000) gallons per day of treatment capacity from Cupertino Sanitary District; who in turn has determined that they have excess capacity for their needs. The purchase price of this capacity is estimated to be \$4,549,161. As joint owners of the WPCP the two cities of San Jose and Santa Clara must approve this transfer by approval of amendments to the current Master Agreements (as already amended three times for Milpitas and twice for Cupertino Sanitary District).

The WPCP Treatment Plant Advisory Committee (TPAC) voted to approve this transfer on August 14, 2008. The San Jose City Council approved this transfer (in concept) on August 19, 2008 subject to their City Manager's approval of Amendments to the Master Agreements for Wastewater Treatment for each of these two agencies. Draft copies of these two Amendments are in council offices for review. The two Amendment are substantially the same and will be finalized within the next few weeks.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

The City of Santa Clara does not need any of this capacity and San Jose has determined that it does not need added capacity prior to a WPCP expansion for regional needs.

## ECONOMIC/FISCAL IMPACT:

The Amendments to the two Agreements do not require any other added costs to the City or Sewer Utility other than staff time for review of the Amendments.

City Manager for Council Action

Approval of Fourth Amendment to the Master Agreement for Wastewater Treatment Between and Among the Cities of San Jose, Santa Clara, and Milpitas and Approval of Third Amendment to the Master Agreement for Wastewater Treatment Between and Among the Cities of San Jose and Santa Clara, and the Cupertino Sanitary District for the transfer of Seven Hundred Fifty Thousand Gallons per Day of Sewage Treatment Capacity from Cupertino Sanitary District to the City of Milpitas.

January 8, 2009

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**RECOMMENDATION:**

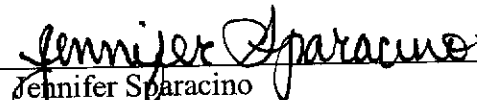
That the Council:

1. Approve the Third Amendment to the Master Agreement for Wastewater Treatment between the City of San Jose, City of Santa Clara, and Cupertino Sanitary District;
2. Approve the Fourth Amendment to the Master Agreement for Wastewater Treatment Between the City of San Jose, City of Santa Clara and City of Milpitas for the transfer of Seven Hundred Fifty Thousand (750,000) gallons per day of Treatment Capacity; and,
3. Authorize the City Manager to execute these Amendments subject to minor, non-substantive changes and as approved by the City Attorney's office.



Alan Kurotori  
Director of Water & Sewer Utilities

APPROVED:



Jennifer Sparacino  
City Manager

***Documents Related to this Report:***

- 1) *Third amendment to Master Agreement...Cupertino Sanitary District*
- 2) *Fourth Amendment to Master Agreement...City of Milpitas*

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**THIRD AMENDMENT TO MASTER  
AGREEMENT FOR WASTEWATER TREATMENT  
BETWEEN  
CITY OF SAN JOSE, CITY OF SANTA CLARA  
AND  
CUPERTINO SANITATION DISTRICT**

**THIS THIRD AMENDMENT TO MASTER AGREEMENT** is dated for convenience this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (hereinafter referred to as "FIRST PARTIES"), and the CUPERTINO SANITATION DISTRICT, a municipal corporation of the State of California (hereinafter referred to as "CUPERTINO".)

**WHEREAS**, FIRST PARTIES and CUPERTINO have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment, dated December 17, 1985, and a Second Amendment to Master Agreement for Wastewater Treatment, dated December 4, 1995 (collectively referred to as "CUPERTINO MASTER AGREEMENT"); and

**WHEREAS**, FIRST PARTIES and City of Milpitas ("MILPITAS") have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment, dated December 17, 1985, and a Second Amendment to Master Agreement for Wastewater Treatment, dated December 4, 1995A and (collectively referred to as "MILPITAS MASTER AGREEMENT"); and

**WHEREAS**, CUPERTINO has designated a portion of the San José/Santa Clara Water Pollution Control Plant ("Plant") capacity allocated to CUPERTINO under the CUPERTINO MASTER AGREEMENT as "excess pooled capacity" in accordance with Part III of the CUPERTINO MASTER AGREEMENT; and

**WHEREAS**, MILPITAS and CUPERTINO have negotiated for the sale by CUPERTINO of seven hundred fifty thousand gallons per day (three quarters of one million gallons per day) (0.75 mgd) with prorated shares of Suspended Solids and Ammonia, but excluding any prorated share of Biochemical Oxygen Demand of CUPERTINO's allocated Plant capacity to MILPITAS; and

**WHEREAS**, MILPITAS and CUPERTINO have also negotiated for the transfer of the portion of CUPERTINO's interest in Plant buffer lands that is associated with 0.75 mgd in Plant capacity;

**NOW, THEREFORE**, CUPERTINO and FIRST PARTIES agree as follows:

**SECTION 1.** Exhibits, A, B, C, and D of the CUPERTINO MASTER AGREEMENT, are amended to read as set forth in "Revised Exhibit A", "Revised Exhibit B", "Revised Exhibit C", and "Revised Exhibit D", respectively, as attached hereto and incorporated by reference herein.

**SECTION 2.** All other provisions of said MASTER AGREEMENT not amended by this THIRD AMENDMENT shall remain unchanged.

**SECTION 3.** This THIRD AMENDMENT shall be effective as of January 1, 2009.

**SECTION 4.** For and in consideration of the approval of this THIRD AMENDMENT by FIRST PARTIES, CUPERTINO has agreed to defend, indemnify, and hold harmless FIRST PARTIES, and officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "proceeding") brought against FIRST PARTIES or their officers, contractors, consultants, attorneys, employees, or agents to challenge, attack, set aside, void or annul this THIRD AMENDMENT and/or any action taken to provide related environmental clearance under the California Environmental Quality Act of 1970, as amended ("CEQA") by FIRST PARTIES or their officers, contractors, consultants, attorneys, employees, agents, advisory agencies, boards or commissions, and/or appeals boards or commissions.

A. CUPERTINO's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by FIRST PARTIES, if any, and costs of suit, claim or litigation, including without limitation, attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by CUPERTINO, FIRST PARTIES, and/or parties initiating or involved in such proceeding.

B. CUPERTINO further agrees to indemnify FIRST PARTIES for all of FIRST PARTIES' costs, fees, and damages incurred in enforcing the indemnification provisions of this THIRD AMENDMENT; and to defend, indemnify and hold harmless FIRST PARTIES and their respective officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an environmental impact report, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if CUPERTINO desires to pursue such City approvals and/or clearances, after initiation of

the proceeding and that are conditioned on the approval of these documents.

C. In the event that CUPERTINO is required to defend FIRST PARTIES in connection with such proceeding, each FIRST PARTY shall have and retain the right to approve:

1. The counsel to so defend FIRST PARTY; and
2. All significant decisions concerning the manner in which the defense is conducted; and
3. Any and all settlements, which approval shall not be unreasonably withheld.

D. FIRST PARTIES shall also have and retain the right to not participate in the defense, except that each FIRST PARTY agrees to reasonably cooperate with CUPERTINO in the defense of the proceeding. If a FIRST PARTY chooses to have counsel of its own defend any proceeding where CUPERTINO has already retained counsel to defend City in such matters, the fees and expenses of the additional counsel selected by FIRST PARTY shall be paid by FIRST PARTY. Notwithstanding the immediately preceding sentence, if a FIRST PARTY City Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by CUPERTINO.

**IN WITNESS WHEREOF**, FIRST PARTIES and the CITY OF MILPITAS have caused this FOURTH AMENDMENT to MASTER AGREEMENT as to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

**"FIRST PARTIES"**

APPROVED AS TO FORM:

CITY OF SAN JOSE,  
a municipal corporation

\_\_\_\_\_  
MOLLIE J. DENT  
Senior Deputy City Attorney

\_\_\_\_\_  
DEANNA SANTANA  
Deputy City Manager  
200 East Santa Clara Street  
San José, CA 95113-1905

APPROVED AS TO FORM:

CITY OF SANTA CLARA,  
a municipal corporation

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone (408) 984-3140

APPROVED AS TO FORM:

CUPERTINO SANITATION  
DISTRICT

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk Of Board

## **REVISED EXHIBIT A**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**

#### **TREATMENT PLANT CAPACITY ALLOCATIONS**

The attached Table 1 contains the Agencies' and FIRST PARTIES' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Table 2 shows the Agencies' and FIRST PARTIES' treatment plant capacities, as effective with the transfer of 0.75 MGD from CUPERTINO to MILPITAS.

#### **Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.**

Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. MILPITAS was allocated 4 MGD of the 24 MGD expansion, and the FIRST PARTIES' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

#### **Table 2- 167 MGD Plant, After transfer of 0.75 MGD from CUPERTINO to MILPITAS.**

Table 2 shows the Agencies' and FIRST PARTIES' treatment plant capacities, as effective with the transfer of 0.75 MGD from CUPERTINO to MILPITAS. The transfer includes prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand. The other Agencies' capacities remain the same as in the 143/167 MGD Plant (Table 2).



**TABLE 1**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**167 MGD PLANT**

**SUMMARY OF CAPACITY ALLOCATION\***

**(Intermediate-Term, First Stage Expansion & South Bay Water Recycling  
Improvements Implemented)**

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José <sup>a</sup>	110.754	390.229	346.198	34.318
Santa Clara <sup>a</sup>	21.344	75.206	66.719	6.613
Subtotal <sup>b</sup>	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.12	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.001	486.000	49.600

\*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2008.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

**TABLE 2**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**167 MGD PLANT**

**SUMMARY OF CAPACITY ALLOCATION\***

**(After Transfer of 0.75 MGD from CUPERTINO to MILPITAS)**

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José <sup>a</sup>	110.754	390.229	346.198	34.318
Santa Clara <sup>a</sup>	21.344	75.206	66.719	6.613
Subtotal <sup>b</sup>	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

\*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2008.
- CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

# REVISED EXHIBIT B

## SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT REPLACEMENT COST OF PLANT & EQUIPMENT June 2008

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST	ENR COST INDEXES
Asset #1 - Original primary plant	1958	3,786,400	34,813,300	899.60
Asset #2 - Plant Additions	1960	1,370,200	11,587,000	978.10
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	196,282,700	1,018.37
Asset #4 - Final Tank	1965	1,183,000	8,388,200	1,166.50
Asset #5 - Digestors	1966	993,600	6,389,100	1,286.30
Other Projects:				
1965-66	1965	103,900	736,700	1,166.50
1966-67	1966	253,800	1,632,000	1,286.30
1967-68	1967	24,200	142,400	1,406.10
1968-69	1968	322,100	1,746,000	1,525.90
1969-70	1969	59,900	301,100	1,645.70
1970-71	1970	102,700	481,100	1,765.50
Sludge Lagoons	1968	839,000	4,547,800	1,525.90
Foam Flotation Program	1970	23,000	107,800	1,765.50
1970 94/MGD Improvements	1970	5,809,400	27,216,500	1,765.50
1970 66/MGD Additions	1970	23,049,000	107,982,400	1,765.50
A.W.T.F.	1977	62,810,900	166,205,400	3,125.78
Other Projects:				
1977-78	1977	745,500	1,972,700	3,125.78
1978-79	1978	312,200	756,800	3,411.98
1979-80	1979	1,421,100	3,257,200	3,608.71
1980-81	1980	1,962,300	3,788,400	4,284.29
1981-82	1981	535,200	1,006,100	4,400.00
1982-83	1982	1,777,765	2,861,000	5,139.51
CAPITAL IMPROVEMENT PROGRAM:				
Intermediate-term Improvement	1987	88,699,500	132,975,800	5,517.18
First Stage Expansion	1987	20,035,100	30,036,100	5,517.18
1987 Capitalized Expenditures	1987	894,900	1,341,600	5,517.18
1989 Capitalized Expenditures	1989	527,473	760,600	5,735.84
1990 Capitalized Expenditures	1990	823,720	1,127,500	6,042.56
1991 Capitalized Expenditures	1991	114,902	155,000	6,131.10
1992 Capitalized Expenditures	1992	407,154	537,800	6,262.14
1993 Capitalized Expenditures	1993	1,291,825	1,660,800	6,433.55
1994 Capitalized Expenditures	1994	255,378	322,100	6,557.48
1995 Capitalized Expenditures	1995	10,595,576	13,394,700	6,542.75
1996 Capitalized Expenditures	1996	3,396,270	4,287,600	6,551.75
1997 Capitalized Expenditures	1997	9,320,130	11,505,400	6,700.22
1998 Capitalized Expenditures	1998	2,829,981	3,460,300	6,764.62
1999 Capitalized Expenditures	1999	133,138,713	161,426,600	6,821.78
2000 Capitalized Expenditures	2000	2,464,590	2,845,100	7,165.08
2001 Capitalized Expenditures	2001	3,866,326	4,316,200	7,409.12
2002 Capitalized Expenditures	2002	930,265	1,004,200	7,662.33
2003 Capitalized Expenditures	2003	1,663,511	1,763,600	7,801.70
2004 Capitalized Expenditures	2004	3,321,630	3,371,800	8,148.25
2005 Capitalized Expenditures	2005	665,760	665,800	8,271.20
2006 Capitalized Expenses	2006	2,096,762	2,300,400	8440.71
2007 Capitalized Expenses	2007	1,197,306	1,223,300	9063.41
2008 Capitalized Expenses	2008	68,856,165	74,121,200	9216.42
<b>TOTAL</b>		<b>489,044,902</b>	<b>1,228,390,900</b>	<b>(*)</b>

- (\*) Plant and equipment replacement cost is distributed to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of the Distribution of Capital Costs).

**NOTE:**

- A. Major plant facilities or equipment items shall be added to this Exhibit in the year purchased. Construction projects shall be added to this Exhibit in the year of acceptance at full construction value.
- B. Process related facilities and equipment that cost in excess of \$2 million shall be allocated to parameters (flow, BOD, SS, Ammonia) based on engineering design. Capital costs that are less than \$2 million and/or are not process related shall be allocated to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of Distribution of Capital Costs).
- C. This Exhibit shall not include replacement or rehabilitation costs.
- D. Facilities and equipment sold or otherwise disposed shall be deleted from this exhibit.
- E. This exhibit shall be updated annually using the June ENR (San Francisco) Construction cost index.

## **REVISED EXHIBIT C**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT LAND DISTRIBUTION**

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 ("Pre-1982 Land."). The City of San José's average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe the City of San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Water Pollution Control Plant properties. Percentage of revenue shall be based upon each Agency's full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease or rental revenues of the Plant property and shall have no fixed term. Table 2 shows FIRST PARTIES' and Agencies' allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2008.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 ("Post 1982 Land"). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for FIRST PARTIES and Participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.

5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for FIRST PARTIES and Agencies effective with the transfer of 0.75 mgd capacity from CUPERTINO to MILPITAS.
6. Sale, lease or rental revenues from Water Pollution Control Plant property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and FIRST PARTIES' purchased capacity in the 167 MGD Plant for the flow parameter only.

**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**  
**LAND COST ALLOCATION METHODOLOGY**

1. Attachment A is a Treatment Plant Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to the City of San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the FIRST PARTIES' and Agencies share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by FIRST PARTIES and Agencies for Pre-1982 Land Costs, as of June 30, 2008.
4. Table 3 shows the land allocation for FIRST PARTIES and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by FIRST PARTIES and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation for CUPERTINO and MILPITAS, reflecting the transfer of land equivalent to 0.75 MGD capacity from CUPERTINO to MILPITAS. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by MILPITAS or CUPERTINO for Pre-1982 Land Costs.

**TABLE 1****SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT****PRE-1982 LAND PURCHASES**

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 <sup>nd</sup> )	43.0	483,879	4/77	793,478
McCarthy (3 <sup>rd</sup> )	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
<b>TOTAL</b>	<b>1,764.23**</b>	<b>\$13,271,823</b>		<b>\$25,997,834</b>

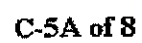


\*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

\*\*Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunkline easements.

**Note: SBWR reservoir sites are not shown.**



**TABLE 2**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**LAND COST ALLOCATION  
PRE-1982 PURCHASES**

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUNT PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2008
San José	66.181	\$17,205,627	\$19,134,275	<\$747,289>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley	7.009	\$1,822,188	\$1,945,035	<\$47,671>
Cupertino	4.463	\$1,160,283	\$1,141,582	\$0
Milpitas	6.166	\$1,603,026	\$523,426	\$704,692
Burbank	0.248	\$64,215	\$9,203	\$40,192
Sunol	0.313	\$81,373	\$10,266	\$52,076,
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara.  
The rental agreement does not entitle it to share in land revenue.

**TABLE 3**  
**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**  
**LAND COST ALLOCATION POST-1982 LAND PURCHASES**

AGENCY	SOUTH Bay Water Recycling Phase 1 easements \$265,000; 1996-1997)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir (4.839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)
San José	64.659%	67.607%	67.069%	67.015%	64.659%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
Sunol	0.210%	0.316%	0.316%	0.316%	0.210%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara.

The rental agreement does not entitle it to share in land revenue.

**TABLE 4**  
**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**  
**LAND PARTICIPATION ALLOCATION**  
**EFFECTIVE WITH THE TRANSFER OF 0.75 MGD CAPACITY**

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José	66.181	67.607%	64.65%
Santa Clara	15.620	14.511%	14.440%
West Valley	6.472	6.397%	7.217%
Cupertino	4.074	3.980%	4.701%
Milpitas	7.092	6.951%	8.533%
Burbank	0.248	0.238%	0.240%
Sunol	0.313	0.316%	0.210%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara.  
The rental agreement does not entitle it to share in land revenue.

## **REVISED EXHIBIT D**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**

#### **PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS**

##### **Intermediate Term Improvements and First Stage Expansion**

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). AGENCY has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

##### **Water Recycling Improvements**

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Water Pollution Control Plant's (WPCP) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the WPCP's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby FIRST PARTIES and AGENCIES would participate in payment for the Water Recycling Program based on their respective flows to the WPCP. Table 1 contains FIRST PARTIES' and AGENCIES' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains FIRST PARTIES and AGENCIES share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

FIRST PARTY SANTA CLARA and MILPITAS elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, MILPITAS

assumed the obligations of CUPERTINO, with respect to a portion of CUPERTINO debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for FIRST PARTY SAN JOSE, and all AGENCIES including MILPITAS, as of January 1, 2009.

MILPITAS also elected to cash fund its share of the Phase 2 Recycling Costs. FIRST PARTIES and all other AGENCIES chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, MILPITAS assumed the obligations of CUPERTINO, with respect to a portion of CUPERTINO debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

**TABLE 1****SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

Participation in South Bay Water Recycling Program  
Phase 1 Capital Costs

<b><u>Agency</u></b>	<b><u>Percent</u></b>	<b><u>Phase 1 Budgeted Costs</u></b>
City of San José	63.833%	\$89,264,067.20
City of Santa Clara	14.256%	\$19,935,590.40
West Valley Sanitation District	7.816%	\$10,929,894.40
Cupertino Sanitary District	5.150%	\$7,201,760.00
City of Milpitas	7.485%	\$10,467,024.00
County Sanitation District 2-3*	1.010%	\$1,412,384.00
Burbank Sanitary District	.240%	\$335,616.00
Sunol Sanitary District	.210%	\$293,664.00
TOTAL	100%	\$139,840,000

\*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.



**TABLE 2**  
**SAN JOSE/SANTA CLARA**  
**WATER POLLUTION CONTROL PLANT**

Participation in South Bay Water Recycling Program  
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José	63.833%	\$63,833,000
City of Santa Clara	14.256%	14,256,000
West Valley Sanitation District	7.816%	7,816,000
Cupertino Sanitary District	5.150%	5,150,000
City of Milpitas	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
Sunol Sanitary District	.210%	210,000
<b>TOTAL</b>	<b>100%</b>	<b>\$100,000,000</b>

\*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

**TABLE 3**  
**SAN JOSE/SANTA CLARA**  
**WATER POLLUTION CONTROL PLANT**

**PHASE 1 RECYCLING DEBT ALLOCATION**

Series 2005 A Refunding Bonds - Principle \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principle \$27,130,000; last payment due November 15, 2020

San José	West Valley	Cupertino	Milpitas	District 2-3	Sunol	Burbank
80.21%	10.594%	6.803%	0.574%	1.436%	.237%	.075%

**TABLE 4  
SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**STATE REVOLVING LOAN FUND DEBT ALLOCATION FY 1998 thru 2019**

	Annual Debt Service Payment	San José	Santa Clara	West Valley	Cupertino	Sanitation District 2-3	Burbank	Sunol
Period(s)	100.000%	68.998%	15.409%	8.448%	5.567% <sup>1</sup>	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000	\$4,463,882	\$3,079,989	\$687,840	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
2017/2018 thru								
FY 2018/2019	\$1,804,020	\$1,244,738	\$277,981	\$152,404	\$100,430	\$19,700	\$4,672	\$4,095

<sup>1</sup> Milpitas shall be responsible for 0.486% of the debt service payment which is the prorated share of the Cupertino payment due on or after January 1, 2009.

**FOURTH AMENDMENT TO MASTER  
AGREEMENT FOR WASTEWATER TREATMENT  
BETWEEN  
CITY OF SAN JOSE, CITY OF SANTA CLARA  
AND  
CITY OF MILPITAS**

**THIS FOURTH AMENDMENT TO MASTER AGREEMENT** is dated for convenience this \_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (hereinafter referred to as "FIRST PARTIES"), and the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter referred to as "MILPITAS".)

**WHEREAS**, FIRST PARTIES and MILPITAS have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment, dated December 17, 1985, a Second Amendment to Master Agreement for Wastewater Treatment, dated December 4, 1995 and a Third Amendment to Master Agreement for Wastewater Treatment dated July 14, 2006 (collectively referred to as "MILPITAS MASTER AGREEMENT"); and

**WHEREAS**, FIRST PARTIES and Cupertino Sanitary District ("CUPERTINO") have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment, dated December 17, 1985, and a Second Amendment to Master Agreement for Wastewater Treatment, dated December 4, 1995 (collectively referred to as "CUPERTINO MASTER AGREEMENT"); and

**WHEREAS**, CUPERTINO has designated a portion of the San José/Santa Clara Water Pollution Control Plant ("Plant") capacity allocated to CUPERTINO under the CUPERTINO MASTER AGREEMENT as "excess pooled capacity" in accordance with Part III of the CUPERTINO MASTER AGREEMENT; and

**WHEREAS**, MILPITAS and CUPERTINO have negotiated for the sale by CUPERTINO of seven hundred fifty thousand gallons per day (three quarters of one million gallons per day) (0.75 mgd) with prorated shares of Suspended Solids and Ammonia, but excluding any prorated share of Biochemical Oxygen Demand of CUPERTINO's allocated Plant capacity to MILPITAS; and

**WHEREAS**, MILPITAS and CUPERTINO have also negotiated for the transfer of the portion of CUPERTINO's interest in Plant buffer lands that is associated with 0.75 mgd in Plant capacity;

**NOW, THEREFORE**, MILPITAS and FIRST PARTIES agree as follows:

**SECTION 1.** Exhibits, A, B, C, and D of the MILPITAS MASTER AGREEMENT, are amended to read as set forth in "Revised Exhibit A", "Revised Exhibit B", "Revised Exhibit C", and "Revised Exhibit D", respectively, as attached hereto and incorporated by reference herein.

**SECTION 2.** All other provisions of said MASTER AGREEMENT not amended by this FOURTH AMENDMENT shall remain unchanged.

**SECTION 3.** This FOURTH AMENDMENT shall be effective upon execution by all of the parties.

**SECTION 4.** For and in consideration of the approval of this FOURTH AMENDMENT by FIRST PARTIES, MILPITAS has agreed to defend, indemnify, and hold harmless FIRST PARTIES, and officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "proceeding") brought against FIRST PARTIES or their officers, contractors, consultants, attorneys, employees, or agents to challenge, attack, set aside, void or annul this FOURTH AMENDMENT and/or any action taken to provide related environmental clearance under the California Environmental Quality Act of 1970, as amended ("CEQA") by FIRST PARTIES or their officers, contractors, consultants, attorneys, employees, agents, advisory agencies, boards or commissions, and/or appeals boards or commissions.

A. MILPITAS's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by FIRST PARTIES, if any, and costs of suit, claim or litigation, including without limitation, attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by MILPITAS, FIRST PARTIES, and/or parties initiating or involved in such proceeding.

B. MILPITAS further agrees to indemnify FIRST PARTIES for all of FIRST PARTIES' costs, fees, and damages incurred in enforcing the indemnification provisions of this FOURTH AMENDMENT; and to defend, indemnify and hold harmless FIRST PARTIES and their respective officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an environmental impact report, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if MILPITAS desires to pursue such City approvals and/or clearances, after initiation of the proceeding and that are conditioned on the approval of these documents.

C. In the event that MILPITAS is required to defend FIRST PARTIES in connection with such proceeding, each FIRST PARTY shall have and retain the right to approve:

1. The counsel to so defend FIRST PARTY; and
2. All significant decisions concerning the manner in which the defense is conducted; and
3. Any and all settlements, which approval shall not be unreasonably withheld.

D. FIRST PARTIES shall also have and retain the right to not participate in the defense, except that each FIRST PARTY agrees to reasonably cooperate with MILPITAS in the defense of the proceeding. If a FIRST PARTY chooses to have counsel of its own defend any proceeding where MILPITAS has already retained counsel to defend City in such matters, the fees and expenses of the additional counsel selected by FIRST PARTY shall be paid by FIRST PARTY. Notwithstanding the immediately preceding sentence, if a FIRST PARTY City Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by MILPITAS.

**IN WITNESS WHEREOF**, FIRST PARTIES and the CITY OF MILPITAS have caused this FOURTH AMENDMENT to MASTER AGREEMENT as to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

**"FIRST PARTIES"**

APPROVED AS TO FORM:

CITY OF SAN JOSE,  
a municipal corporation

\_\_\_\_\_  
MOLLIE J. DENT  
Senior Deputy City Attorney

\_\_\_\_\_  
DEANNA SANTANA  
Deputy City Manager  
200 East Santa Clara Street  
San José, CA 95113-1905

APPROVED AS TO FORM:

CITY OF SANTA CLARA,  
a municipal corporation

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone (408) 984-3140

APPROVED AS TO FORM:

CITY OF MILPITAS,  
a municipal corporation

\_\_\_\_\_  
Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Thomas C. Williams  
City Manager  
455 E. Calaveras Blvd  
Milpitas, CA 95035  
Telephone: (408) 586-3050



## **REVISED EXHIBIT A**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**

#### **TREATMENT PLANT CAPACITY ALLOCATIONS**

The attached Table 1 contains the Agencies' and FIRST PARTIES' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Table 2 shows the Agencies' and FIRST PARTIES' treatment plant capacities, as effective with the transfer of 0.75 MGD from CUPERTINO to MILPITAS. On July 1, 2006, West Valley Sanitation District transferred 1 MGD of flow with 2.430 KLBS/Day Biochemical Oxygen Demand, 2.308 KLBS/Day Suspended Solids, and 0.242 KLBS/Day Ammonia capacity to Milpitas.

#### **Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.**

Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. MILPITAS was allocated 4 MGD of the 24 MGD expansion, and the FIRST PARTIES' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

#### **Table 2— 167 MGD Plant, After transfer of 0.75 MGD from CUPERTINO to MILPITAS.**

Table 2 shows the Agencies' and FIRST PARTIES' treatment plant capacities, as effective with the transfer of 0.75 MGD from CUPERTINO to MILPITAS. The transfer includes prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand. The other Agencies' capacities remain the same as in the 143/167 MGD Plant (Table 2).

**TABLE 1**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**167 MGD PLANT**

**SUMMARY OF CAPACITY ALLOCATION\***

**(Intermediate-Term, First Stage Expansion & South Bay Water Recycling  
Improvements Implemented)**

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José <sup>a</sup>	110.754	390.229	346.198	34.318
Santa Clara <sup>a</sup>	21.344	75.206	66.719	6.613
Subtotal <sup>b</sup>	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.12	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.001	486.000	49.600

\*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

**Footnotes:**

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2008.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

**TABLE 2**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**167 MGD PLANT**

**SUMMARY OF CAPACITY ALLOCATION\***

**(After Transfer of 0.75 MGD from CUPERTINO to MILPITAS)**

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José <sup>a</sup>	110.754	390.229	346.198	34.318
Santa Clara <sup>a</sup>	21.344	75.206	66.719	6.613
Subtotal <sup>b</sup>	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

\*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2008.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

## **REVISED EXHIBIT B**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT REPLACEMENT COST OF PLANT & EQUIPMENT June 2008**

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST	ENR COST INDEXES
Asset #1 - Original primary plant	1958	3,786,400	34,813,300	899.60
Asset #2 - Plant Additions	1960	1,370,200	11,587,000	978.10
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	196,282,700	1,018.37
Asset #4 - Final Tank	1965	1,183,000	8,388,200	1,166.50
Asset #5 - Digestors	1966	993,600	6,389,100	1,286.30
Other Projects:				
1965-66	1965	103,900	736,700	1,166.50
1966-67	1966	253,800	1,632,000	1,286.30
1967-68	1967	24,200	142,400	1,406.10
1968-69	1968	322,100	1,746,000	1,525.90
1969-70	1969	59,900	301,100	1,645.70
1970-71	1970	102,700	481,100	1,765.50
Sludge Lagoons	1968	839,000	4,547,800	1,525.90
Foam Flotation Program	1970	23,000	107,800	1,765.50
1970 94/MGD Improvements	1970	5,809,400	27,216,500	1,765.50
1970 66/MGD Additions	1970	23,049,000	107,982,400	1,765.50
A.W.T.F.	1977	62,810,900	166,205,400	3,125.78
Other Projects:				
1977-78	1977	745,500	1,972,700	3,125.78
1978-79	1978	312,200	756,800	3,411.98
1979-80	1979	1,421,100	3,257,200	3,608.71
1980-81	1980	1,962,300	3,788,400	4,284.29
1981-82	1981	535,200	1,006,100	4,400.00
1982-83	1982	1,777,765	2,861,000	5,139.51
<b>CAPITAL IMPROVEMENT PROGRAM:</b>				
Intermediate-term Improvement	1987	88,699,500	132,975,800	5,517.18
First Stage Expansion	1987	20,035,100	30,036,100	5,517.18
1987 Capitalized Expenditures	1987	894,900	1,341,600	5,517.18
1989 Capitalized Expenditures	1989	527,473	760,600	5,735.84
1990 Capitalized Expenditures	1990	823,720	1,127,500	6,042.56
1991 Capitalized Expenditures	1991	114,902	155,000	6,131.10
1992 Capitalized Expenditures	1992	407,154	537,800	6,262.14
1993 Capitalized Expenditures	1993	1,291,825	1,660,800	6,433.55
1994 Capitalized Expenditures	1994	255,378	322,100	6,557.48
1995 Capitalized Expenditures	1995	10,595,576	13,394,700	6,542.75
1996 Capitalized Expenditures	1996	3,396,270	4,287,600	6,551.75
1997 Capitalized Expenditures	1997	9,320,130	11,505,400	6,700.22
1998 Capitalized Expenditures	1998	2,829,981	3,460,300	6,764.62
1999 Capitalized Expenditures	1999	133,138,713	161,426,600	6,821.78
2000 Capitalized Expenditures	2000	2,464,590	2,845,100	7,165.08
2001 Capitalized Expenditures	2001	3,866,326	4,316,200	7,409.12
2002 Capitalized Expenditures	2002	930,265	1,004,200	7,662.33
2003 Capitalized Expenditures	2003	1,663,511	1,763,600	7,801.70
2004 Capitalized Expenditures	2004	3,321,630	3,371,800	8,148.25
2005 Capitalized Expenditures	2005	665,760	665,800	8,271.20
2006 Capitalized Expenses	2006	2,096,762	2,300,400	8440.71
2007 Capitalized Expenses	2007	1,197,306	1,223,300	9063.41
2008 Capitalized Expenses	2008	68,856,165	74,121,200	9216.42
<b>TOTAL</b>		<b>489,044,902</b>	<b>1,228,390,900</b>	<b>(*)</b>

- (\*) Plant and equipment replacement cost is distributed to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of the Distribution of Capital Costs).

**NOTE:**

- A. Major plant facilities or equipment items shall be added to this Exhibit in the year purchased. Construction projects shall be added to this Exhibit in the year of acceptance at full construction value.
- B. Process related facilities and equipment that cost in excess of \$2 million shall be allocated to parameters (flow, BOD, SS, Ammonia) based on engineering design. Capital costs that are less than \$2 million and/or are not process related shall be allocated to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of Distribution of Capital Costs).
- C. This Exhibit shall not include replacement or rehabilitation costs.
- D. Facilities and equipment sold or otherwise disposed shall be deleted from this exhibit.
- E. This exhibit shall be updated annually using the June ENR (San Francisco) Construction cost index.

## **REVISED EXHIBIT C**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT LAND DISTRIBUTION**

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 ("Pre-1982 Land."). The City of San José's average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe the City of San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Water Pollution Control Plant properties. Percentage of revenue shall be based upon each Agency's full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease or rental revenues of the Plant property and shall have no fixed term. Table 2 shows FIRST PARTIES' and Agencies' allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2008.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 ("Post 1982 Land"). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for FIRST PARTIES and Participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.

5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for FIRST PARTIES and Agencies effective with the transfer of 0.75 mgd capacity from CUPERTINO to MILPITAS.
6. Sale, lease or rental revenues from Water Pollution Control Plant property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and FIRST PARTIES' purchased capacity in the 167 MGD Plant for the flow parameter only.

**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**  
**LAND COST ALLOCATION METHODOLOGY**

1. Attachment A is a Treatment Plant Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to the City of San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the FIRST PARTIES' and Agencies share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by FIRST PARTIES and Agencies for Pre-1982 Land Costs, as of June 30, 2008.
4. Table 3 shows the land allocation for FIRST PARTIES and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by FIRST PARTIES and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation for CUPERTINO and MILPITAS, reflecting the transfer of land equivalent to 0.75 MGD capacity from CUPERTINO to MILPITAS. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by MILPITAS or CUPERTINO for Pre-1982 Land Costs.



**TABLE 1****SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT****PRE-1982 LAND PURCHASES**

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 <sup>nd</sup> )	43.0	483,879	4/77	793,478
McCarthy (3 <sup>rd</sup> )	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
<b>TOTAL</b>	<b>1,764.23**</b>	<b>\$13,271,823</b>		<b>\$25,997,834</b>

\*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

\*\*Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunkline easements.

**Note: SBWR reservoir sites are not shown.**

**Note: SBWR reservoir sites are not shown.**



**TABLE 2**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

**LAND COST ALLOCATION**

**PRE-1982 PURCHASES**

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUNT PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2008
San José	66.181	\$17,205,627	\$19,134,275	<\$747,289>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley	7.009	\$1,822,188	\$1,945,035	<\$47,671>
Cupertino	4.463	\$1,160,283	\$1,141,582	\$0
Milpitas	6.166	\$1,603,026	\$523,426	\$704,692
Burbank	0.248	\$64,215	\$9,203	\$40,192
Sunol	0.313	\$81,373	\$10,266	\$52,076,
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara.  
The rental agreement does not entitle it to share in land revenue.

**TABLE 3**  
**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**  
**LAND COST ALLOCATION POST-1982 LAND PURCHASES**

AGENCY	SOUTH Bay Water Recycling Phase 1 easements \$265,000; 1996-1997)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir (4,839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)
San José	64.659%	67.607%	67.069%	67.015%	64.659%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
Sunol	0.210%	0.316%	0.316%	0.316%	0.210%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara.

The rental agreement does not entitle it to share in land revenue.

**TABLE 4**  
**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**  
**LAND PARTICIPATION ALLOCATION**  
**EFFECTIVE WITH THE TRANSFER OF 0.75 MGD CAPACITY**

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José	66.181	67.607%	64.65%
Santa Clara	15.620	14.511%	14.440%
West Valley	6.472	6.397%	7.217%
Cupertino	4.074	3.980%	4.701%
Milpitas	7.092	6.951%	8.533%
Burbank	0.248	0.238%	0.240%
Sunol	0.313	0.316%	0.210%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara.  
The rental agreement does not entitle it to share in land revenue.

## **REVISED EXHIBIT D**

### **SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**

#### **PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS**

##### **Intermediate Term Improvements and First Stage Expansion**

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). AGENCY has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

##### **Water Recycling Improvements**

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Water Pollution Control Plant's (WPCP) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the WPCP's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby FIRST PARTIES and AGENCIES would participate in payment for the Water Recycling Program based on their respective flows to the WPCP. Table 1 contains FIRST PARTIES' and AGENCIES' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains FIRST PARTIES and AGENCIES share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

FIRST PARTY SANTA CLARA and MILPITAS elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, MILPITAS

assumed the obligations of CUPERTINO, with respect to a portion of CUPERTINO debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for FIRST PARTY SAN JOSE, and all AGENCIES including MILPITAS, as of January 1, 2009.

MILPITAS also elected to cash fund its share of the Phase 2 Recycling Costs. FIRST PARTIES and all other AGENCIES chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, MILPITAS assumed the obligations of CUPERTINO, with respect to a portion of CUPERTINO debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.



**TABLE 1**

**SAN JOSE/SANTA CLARA  
WATER POLLUTION CONTROL PLANT**

Participation in South Bay Water Recycling Program  
Phase 1 Capital Costs

<b><u>Agency</u></b>	<b><u>Percent</u></b>	<b><u>Phase 1 Budgeted Costs</u></b>
City of San José	63.833%	\$89,264,067.20
City of Santa Clara	14.256%	\$19,935,590.40
West Valley Sanitation District	7.816%	\$10,929,894.40
Cupertino Sanitary District	5.150%	\$7,201,760.00
City of Milpitas	7.485%	\$10,467,024.00
County Sanitation District 2-3*	1.010%	\$1,412,384.00
Burbank Sanitary District	.240%	\$335,616.00
Sunol Sanitary District	.210%	\$293,664.00
<b>TOTAL</b>	<b>100%</b>	<b>\$139,840,000</b>

\*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

**TABLE 2**  
**SAN JOSE/SANTA CLARA**  
**WATER POLLUTION CONTROL PLANT**

Participation in South Bay Water Recycling Program  
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José	63.833%	\$63,833,000
City of Santa Clara	14.256%	14,256,000
West Valley Sanitation District	7.816%	7,816,000
Cupertino Sanitary District	5.150%	5,150,000
City of Milpitas	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
Sunol Sanitary District	.210%	210,000
<b>TOTAL</b>	<b>100%</b>	<b>\$100,000,000</b>

\*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

**TABLE 3**  
**SAN JOSE/SANTA CLARA**  
**WATER POLLUTION CONTROL PLANT**

**PHASE 1 RECYCLING DEBT ALLOCATION**

Series 2005 A Refunding Bonds - Principle \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principle \$27,130,000; last payment due November 15, 2020

San José	West Valley	Cupertino	Milpitas	District 2-3	Sunol	Burbank
80.21%	10.594%	6.803%	0.574%	1.436%	.237%	.075%

**TABLE 4**  
**SAN JOSE/SANTA CLARA**  
**WATER POLLUTION CONTROL PLANT**

**STATE REVOLVING LOAN FUND DEBT ALLOCATION FY 1998 thru 2019**

Repayment Period(s)	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
	100.000%	68.998%	15.409%	8.448%	5.567% <sup>1</sup>	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000	\$4,463,882	\$3,079,989	\$687,840	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
thru 2017/2018								
FY 2018/2019	\$1,804,020	\$1,244,738	\$277,981	\$152,404	\$100,430	\$19,700	\$4,672	\$4,095

<sup>1</sup> Milpitas shall be responsible for 0.486% of the debt service payment which is the prorated share of the Cupertino payment due on or after January 1, 2009.

**CITY OF SANTA CLARA**  
**AGENDA MATERIAL ROUTE SHEET**

Council Date: January 27, 2009

**SUBJECT:** Approval of Third and Fourth Amendment to the Master Agreement for Wastewater Treatment.

**CERTIFICATION**

The proposed Approval of Fourth Amendment to the Master Agreement for Wastewater Treatment Between and Among the Cities of San Jose, Santa Clara, and Milpitas and Approval of Third Amendment to the Master Agreement for Wastewater Treatment Between and Among the Cities of San Jose and Santa Clara, and the Cupertino Sanitary District.

Regarding For the transfer of Seven Hundred Fifty Thousand Gallons per Day of Sewage Treatment Capacity from Cupertino Sanitary District to the City of Milpitas.

**PUBLICATION REQUIRED:**

The attached Notice/Resolution/Ordinance is to be published \_\_\_\_\_ time(s) at least \_\_\_\_\_ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for \_\_\_\_\_, 200\_\_.

**AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:**

**Federal Codes:**

Title \_\_\_\_\_ U.S.C. § \_\_\_\_\_  
(Titles run 1 through 50)

**California Codes:**

Code \_\_\_\_\_ § \_\_\_\_\_  
(i.e., Government, Street and Highway, Public Resources)

**Federal Regulations:**

Title \_\_\_\_\_ C.F.R. § \_\_\_\_\_  
(Titles run 1 through 50)

**California Regulations:**

Title \_\_\_\_\_ California Code of Regulations § \_\_\_\_\_  
(Titles run 1 through 28)

City  
City Charter § \_\_\_\_\_ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)  
City Code § \_\_\_\_\_

1. As to City Functions, by
2. As to Legality, by
3. As to Environmental Impact Requirements, by
4. As to Substance, by

  
\_\_\_\_\_  
Department Head

  
\_\_\_\_\_  
City Attorney's Office / CAO Assignment No 08. 0009

N/A

\_\_\_\_\_  
Director of Planning and Inspection

  
\_\_\_\_\_  
City Manager

Revision Date June 7, 2005